IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LDG.) NO. 34 OF 2006.

M/s.National Engineering Works
amd two others. ... Petitioners
Versus.
State Bank of India. ... Respondent.

Shri M.M.Vashi for the Petitioners.

Ms.Stella Naronha for the Respondent.

CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.

DATED : 12th JANUARY, 2006.

P.C.:

1. Heard Shri Vashi in support of this petition and Ms.Stella Naronha for the Respondents. Two orders passed by the Debt Recovery Tribunal dated 27th December 2005 are under challenge in this petition. The petition has been filed since Debt Recovery Appellate Tribunal is presently not appointed in Mumbai. The first order is on an application to lead certain secondary evidence. The Tribunal has commented that the secondary evidence could not be permitted on the kind of justification that was given in support of the application. It was stated that the documents were missing and that one Ram Singh who was an employee, found some documents in a trunk and that is how now those documents are sought to be relied upon. Surely as observed by the Tribunal, when the possession of the factory was taken by the Maharashtra State Finance Corporation, the documents which were

lying in the factory premises could have been taken over by the Petitioners. The difficulty in all such secondary evidence is to find out authenticity of the secondary document. We do not find any fault as far as this order is concerned.

2. The second order of the Tribunal is to decline cross examination. As far as that part is concerned, it has been laid down in paragraph 23 of the Judgment of the Apex Court in **Union of India v/s. Delhi Bar Association, JT 2002 (3) SC 131,** that the claims before the Tribunal are basically to be decided on documents and there will be hardly any transaction where oral evidence would be relevant. In the present case, cross examination is sought on the basis of the rehabilitation package from which loan was supposed disbursed to the Petitioners. The bank itself has stated that it had not disbursed the amount based on the rehabilitation package. This being the position, there was no occasion to permit any cross examination.

3. The Tribunal while dismissing these applications has awarded costs of Rs.5,000/- and if the costs are not paid, the defence should struck of. As far as this part of the order is concerned, we set aside the same. The Petitioners will not be required to pay the costs awarded by the Tribunal, as Shri Vashi has explained that the applications were made without much delay. The

defence of the Petitioners will be available to them during the trial. With these modifications, the orders passed by the Tribunal are confirmed and the petition is dismissed. The Debt Recovery Tribunal will decide the matter on its own merits without being influenced by any of the observations made in this order.

(H.L.GOKHALE, J.)

(Abhay S.Oka, J.)